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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

KELVIN DEWAYNE FIELDS,

Defendant and Appellant.

B255902

(Los Angeles County  
Super. Ct. No. YA084791)

APPEAL from a judgment of the Superior Court of Los Angeles County, Eric C. Taylor, Judge. Affirmed.

Jennifer Hansen, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson and Theresa A. Patterson, Deputy Attorneys General, for Plaintiff and Respondent.

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Kelvin Dewayne Fields was convicted following a jury trial of two counts of sodomy by use of force, aggravated assault, inflicting corporal injury on a cohabitant and pimping with special findings he had used a deadly weapon (a knife) when committing sodomy. Beshawn R., the woman Fields was pimping and with whom he was sexually intimate, was the victim of all his crimes. On appeal Fields contends only that the trial court abused its discretion and violated his constitutional right to a fair trial by admitting into evidence pursuant to Evidence Code section 1109<sup>1</sup> his prior acts of domestic violence against his wife, Dionna F. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### *1. The Evidence of the Charged Offenses*

Fields and Beshawn, then 20 years old and the mother of two young children, met in August 2011 through a social media website, became sexually intimate and dated for one month. Beshawn and Fields reconnected in May 2012 approximately two weeks after she had given birth to her third child. In June 2012 Beshawn told Fields she was looking for a new place to live because her father, with whom she had been living in Long Beach, was planning to move to Arizona. Fields invited Beshawn and her children to live with him at the Gardena Towers Inn on Western Avenue in Gardena.<sup>2</sup> Beshawn moved in with Fields on June 17, 2012, and the two resumed their intimate relationship.

One or two weeks later, after the two had spent several hours at a nightclub, Fields took Beshawn to the corner of Figueroa Street and Gage Avenue and told her to “catch some tricks.” According to Beshawn, she had not previously worked as a prostitute and did not want to comply but believed she would be physically abused if she refused. Beshawn made \$80 and gave the money to Fields. Beshawn continued to work as a prostitute over the next few days, turning over all the money she earned to Fields.

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<sup>1</sup> Statutory references are to this code unless otherwise indicated.

<sup>2</sup> When Beshawn initially moved in with Fields at the Gardena Towers Inn, they lived in a “single” without a separate bedroom. They subsequently moved into a one bedroom unit, which had a living room and separate bedroom, as well as a larger kitchen.

On the evening of June 30, 2012 Beshawn drove to Long Beach to pick up Fields's 15-year-old daughter, Ariana, who occasionally babysat Beshawn's children while Fields and Beshawn were out. Fields became angered that Beshawn was gone so long and called her several times as she and Ariana were returning to the motel to ask what she was doing. He accused her of going to see other men, yelled that she was lying when she denied it, and threatened her, "When you get here, I'm going to fuck you up . . . because you're playing games." Upset and distracted by the telephone calls, Beshawn missed her exit and returned even later than anticipated to the motel.

Once Beshawn and Ariana arrived back at the motel, Fields told his daughter to remain in the car. Beshawn entered the motel room and walked toward the bedroom where her children were, intending to leave the motel with them. Fields followed her and told her to go into the bathroom so he could talk to her. (A friend of Fields's was visiting at the time and was in the living room.) Fields followed Beshawn into the bathroom, closed the door, choked her with both his hands and banged her head against the bathroom mirror. Fields left after five minutes; Beshawn remained in the bathroom. Fields quickly returned and told Beshawn, who was crying, to wipe her face and join him in the living room where they had company. Beshawn did as she was told.

Fields's friend left the motel room around 12:30 or 1:00 a.m. Fields told his daughter to come inside at this point and to go into the bedroom with Beshawn's children.<sup>3</sup> Ariana noticed Beshawn was crying.

Fields directed Beshawn to sit on the couch with him and demanded to know where she had taken his daughter. When Beshawn said she had not taken her anywhere, Fields again accused her of lying, slapped her three or four times and choked her. He also dug his fingernails into Beshawn's face, causing scratch marks. Fields then walked

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<sup>3</sup> The friend confirmed that Fields and Beshawn went into the bathroom after she returned home, but testified he did not hear any banging noises while they were inside the bathroom; it did not appear to him that they had been engaged in a struggle or that Beshawn had been crying; and he did not see any marks on her neck.

into the kitchen, turned on the stove and heated a knife. As he was doing this, Fields asked Beshawn if she liked scary movies. When she responded she did not, Fields said, “Well you’re in one.” He walked back to the couch with the knife and told Beshawn, “Since you’re saying fuck me and you don’t want to listen to me, put your fingers on the table.” When she failed to comply, Fields threatened to burn her with the knife, putting it close to her face. Beshawn placed her left hand on the coffee table. Fields made a motion as if to use the knife on her hand, and Beshawn pulled her hand away. Fields threatened her again and went back to the stove to reheat the knife.

Fields ordered Beshawn to join him in the kitchen. Holding the knife, Fields told Beshawn to pull down her pants and bend over the sink. He then forcibly penetrated her anus with his penis. Beshawn pleaded with him to stop because it hurt and pushed his penis out. Fields reinserted it and walked her over to the couch while maintaining penetration. After three to five minutes he ejaculated. After further disagreement about whether Beshawn was hiding money from him, Fields ultimately told her he would not do anything else to her. Ariana, who was in the bedroom with Beshawn’s children while these events were taking place, testified she heard Fields and Beshawn arguing in the living room for about an hour.

Although Fields did not testify and called no defense witnesses, issues were raised regarding the credibility of Beshawn’s testimony. For example, Beshawn and Fields drove with Beshawn’s children to her sister’s house the day after the attack, but Beshawn did not tell her sister what had happened. However, she explained Fields was with her and she did not want him to “get raged.” That evening Beshawn and Fields went together for drinks at a nightclub and spent the night together after she once again engaged in acts of prostitution at Fields’s behest. Two days later, in the early morning on July 3, 2012, Beshawn was cited for prostitution. She told the police officer she did not have a pimp and, again, did not report what Fields had done to her. Later that day, however, Beshawn told her sister that Fields had choked and raped her and had made her work as a

prostitute. The sister called their father, who then took Beshawn to the Gardena Police Department to report the crimes.<sup>4</sup>

## *2. Fields's Prior Acts of Domestic Violence*

### *a. The court's pretrial review of the proposed evidence*

Pursuant to section 1109, subdivision (b),<sup>5</sup> prior to trial the People notified Fields's defense counsel they intended to present evidence of Fields's prior acts of domestic violence against his wife, provided copies of police reports documenting those uncharged offenses and summarized the anticipated testimony in their trial brief.<sup>6</sup> After the jurors were selected and sworn but before opening statements, the court held a section 402 hearing to consider defense counsel's objection to the evidence on the ground it was more prejudicial than probative.

As described before trial, in July 2005 Fields had accused his wife Dionna of being unfaithful. (Although still married, Fields and his wife were living apart at the time.) During the ensuing argument, while the couple's two children were in bed in another room, Fields pulled his wife's hair and punched her several times. Dionna called the police and subsequently obtained a restraining order against Fields. The following month Fields again confronted Dionna about her purported infidelity (violating the protective order) and pushed her into closet doors during their argument. The police were again called.

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<sup>4</sup> Details of Beshawn's statements to the investigating officers and to the nurse who conducted the sexual assault response team (SART) examination were inconsistent and varied to some extent from her description of events at trial.

<sup>5</sup> Section 1109, subdivision (b), provides, "In an action in which evidence is to be offered under this section, the people shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, in compliance with the provisions of Section 1054.7 of the Penal Code." Penal Code section 1054.7 establishes time limitations for certain required disclosures.

<sup>6</sup> Initially the People also sought to introduce the prior uncharged acts as evidence of Fields's intent and motive pursuant to section 1101, subdivision (b).

The prosecutor argued the prior uncharged acts and the current charged offenses were similar because the physical assaults in each instance followed accusations of infidelity and Fields had reacted violently in jealous anger notwithstanding the presence of children in the residence. She also noted the 2005 events were well within the 10-year period specified in section 1109, subdivision (e).<sup>7</sup> However, the prosecutor advised the court she did not know if Dionna would testify honestly about the past incidents or would recant her prior statements. If necessary, the prosecutor was prepared to present testimony from San Gabriel police officers who had taken the reports from Dionna regarding Fields's prior acts of domestic violence. Defense counsel contended "the main theme here is certainly not domestic violence," although she acknowledged at least one of the charges (inflicting corporal injury on a cohabitant) qualified as an act of domestic violence. Nonetheless, defense counsel insisted the events were significantly different and the prejudicial effect of the evidence was substantial, asserting the evidence was being offered to make Fields "look like a bad guy." Finding "there are some similarities" between the uncharged acts and charged offenses, the trial court ruled the evidence would be admitted under section 1109.

b. *The evidence at trial*

At trial Dionna testified on July 10, 2005 she and Fields had argued after he accused her of being unfaithful to him. The argument became physical, and she and Fields struck each other. Fields yelled and threw things, hit her on her forehead and pulled her hair. According to Dionna, the argument continued for eight hours, and she finally called the police because she was tired and wanted to go to sleep. Fields was arrested, and Dionna obtained a restraining order. Dionna said she did not recall Fields putting his hands on her neck and pinning her against the wall in the bathroom. On August 13, 2005 Fields came to Dionna's apartment in violation of the restraining order.

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Section 1109, subdivision (e), provides, "[e]vidence of acts occurring more than 10 years before the charged offense is inadmissible under this section, unless the court determines that the admission of this evidence is in the interest of justice."

He pushed her against the closet doors, causing her to fall. She cried for help; neighbors called the police; and Fields was again arrested. Dionna also testified there were other times Fields had been violent with her when she did not call the police including one occasion when he head-butted her, causing a scar on her forehead.

San Gabriel Police Officer Dane Woolwine, who responded to Dionna's residence on July 10, 2005, testified he had observed a bump on Dionna's head, a small cut on her forehead and bruises on her arms. Dionna told Woolwine that Fields had caused the injuries and that he had punched her all over her body and had pinned her against the bathroom wall with his hands around her neck. Photographs of Dionna's injuries taken on July 10, 2005 were entered into evidence.<sup>8</sup>

### *3. Verdict and Sentencing*

Fields was convicted of two counts of sodomy by use of force (Pen. Code, § 286, subd. (c)(2)(A)) with true findings he had used a deadly weapon in committing the offenses (Pen. Code, §§ 12022.3, subd. (a), 667.61, subds. (b) & (e)). He was also convicted of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)), inflicting corporal injury on a cohabitant (Pen. Code, § 273.5, subd. (a)), and pimping (Pen. Code, § 266h, subd. (a)). The jury found not true the special allegation Fields had used a deadly weapon in committing the aggravated assault. In a bifurcated proceeding Fields admitted he had served five prior prison terms within the meaning of Penal Code section 667.5, subdivision (b). The court sentenced Fields to an aggregate state prison term of 26 years four months to be followed by an indeterminate term of 15 years to life and imposed statutory fees, fines and assessments.

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The jury was fully instructed regarding the proper consideration of the evidence of uncharged acts of domestic violence pursuant to CALCRIM No. 852. Fields does not contend the instruction was incorrect.

## DISCUSSION

### 1. *Legal Principles and Standard of Review*

In a criminal trial involving charges of domestic violence, section 1109 permits the introduction of evidence of the defendant's commission of other acts of domestic violence unless, pursuant to section 352, "its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."<sup>9</sup> The Legislature enacted section 1109 because of "the special nature of domestic violence crime . . . : 'The propensity inference is particularly appropriate in the area of domestic violence because on-going violence and abuse is the norm in domestic violence cases. Not only is there a great likelihood that any one battering episode is part of a larger scheme of dominance and control, that scheme usually escalates in frequency and severity. Without the propensity inference, the escalating nature of domestic violence is likewise masked. . . .' (Assem. Com. Rep. on Public Safety (June 25, 1996) pp. 3-4.)" (*People v. Johnson* (2000) 77 Cal.App.4th 410, 419; see also *People v. Jennings* (2000) 81 Cal.App.4th 1301, 1313.) Section 1109 thus establishes an explicit statutory exception to the general rule, as stated in section 1101, subdivision (a), that precludes admission of uncharged misconduct to show the defendant had a propensity to commit the charged crimes. (See *Johnson*, at p. 417; see also *People v. Falsetta* (1999) 21 Cal.4th 903, 911 [discussing legislative history of section 1108, which authorizes in sexual offense cases the admission of evidence of defendant's other sexual offenses to prove his or her propensity to commit the charged sex offense].)

In determining whether to admit prior acts of domestic violence, the trial court must consider whether the prior acts are more inflammatory than the charged conduct, the

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<sup>9</sup> Section 1109, subdivision (a)(1), states, "[I]n a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other domestic violence is not made inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352."



possibility the jury might confuse the prior acts with the charged acts, the closeness in time of the prior acts, and whether the defendant has already been convicted of and punished for the prior acts. (*People v. Rucker* (2005) 126 Cal.App.4th 1107, 1119.) “The prejudice which exclusion of evidence under Evidence Code section 352 is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence. ‘[All] evidence which tends to prove guilt is prejudicial or damaging to the defendant’s case. The stronger the evidence, the more it is “prejudicial.” The “prejudice” referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues. In applying [Evidence Code] section 352, “prejudicial” is not synonymous with “damaging.”’” (*People v. Karis* (1988) 46 Cal.3d 612, 638.)

The decision to admit evidence of prior acts of domestic violence as propensity evidence under sections 1109 and 352 is reviewed for an abuse of discretion. (*People v. Poplar* (1999) 70 Cal.App.4th 1129, 1138; see *People v. Kipp* (1998) 18 Cal.4th 349, 369 [trial court’s determination of admissibility of evidence of uncharged offenses is generally reviewed for abuse of discretion].) An abuse of discretion will not be found unless the trial court has exceeded the bounds of reason by exercising its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10; *People v. Brown* (2011) 192 Cal.App.4th 1222, 1233.)

## *2. The Trial Court Did Not Abuse Its Discretion in Admitting the Evidence of Fields’s Prior Acts of Domestic Violence*

Fields contends evidence of his prior acts of domestic violence should have been excluded under section 352 because the testimony and photographs were highly inflammatory but had only minimal probative value due to the dissimilarity of the 2005 incidents and the charged offenses. Fields first notes he was not in the same type of relationship with Dionna and Beshawn: He was married to Dionna but was not living with her in 2005; he was alleged to be Beshawn’s pimp and was staying with her in a

motel room at the time of the charged offenses. In addition, the fighting with Dionna was described as mutual; she scratched him as he was fighting with her. In contrast, Beshawn was compliant throughout the violent assault. In addition, although accusations of infidelity were made in July 2005 and again during the attack on Beshawn, there was no indication the August 2005 incident was prompted by jealousy.<sup>10</sup> Moreover, Fields was reportedly upset with Beshawn's activities with Ariana, not simply her alleged unfaithfulness. Finally, the nature of the physical violence itself was quite different in 2005 from the aggravated sexual attack on Beshawn in 2012.

Fields greatly exaggerates the significance of these factual differences in evaluating the trial court's exercise of discretion in admitting the evidence. There were plainly "some similarities" between the attacks, as the trial court expressly found: Angered by concerns as to the faithfulness of his present or former sexual partners, Fields attacked them, in part by choking them and by battering their heads. That his wife fought back while his current girlfriend, whom he had forced into prostitution, passively submitted does not lessen the relevance of the evidence to prove that Fields was inclined or disposed to commit domestic violence when provoked. Moreover, the primary difference between the 2005 and 2012 incidents is that the earlier events were far less serious (and thus less inflammatory) than the charged offenses, significantly reducing the risk of undue prejudice if the evidence were to be admitted. (See *People v. Rucker*, *supra*, 126 Cal.App.4th at p. 1119 [discussing relative seriousness of prior and current offenses as initial factor in evaluating undue prejudice]; *People v. Jennings*, *supra*, 81 Cal.App.4th at p. 1315 [same].) The differences discussed by Fields also demonstrate the possibility of confusion by the jury between the events was slight, yet another indication admission of the evidence would not create undue prejudice. (See *Rucker*, at p. 1119; *Jennings*, at p. 1315.) Finally, the presentation of the evidence did not require a

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<sup>10</sup> The People indicated at the section 402 hearing that Fields had accused Dionna of infidelity during the August 2005 attack. However, no evidence was presented at trial regarding the cause of this second assault.

significant amount of trial time. As the Attorney General points out, Dionna's testimony covers only 25 pages of the reporter's transcript and Officer Woolwine's an additional six pages. (See *People v. Johnson* (2010) 185 Cal.App.4th 520, 533 [trial court finding that presentation of evidence would not consume inordinate time proved to be true: one witness's testimony covered only seven pages of transcript; the second witness's about 40 pages].)

In sum, the trial court acted well within its discretion in admitting evidence of Fields's prior acts of domestic violence under section 1109. Because the evidence was properly admitted, Fields's constitutional argument necessarily fails as well. (*People v. Brown, supra*, 192 Cal.App.4th at p. 1233, fn. 14; *People v. Cabrera* (2007) 152 Cal.App.4th 695, 704; see *People v. Falsetta, supra*, 21 Cal.4th at pp. 917-918.)

#### **DISPOSITION**

The judgment is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

STROBEL, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.